

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS
(Boston Division)

UNITED STATES SECURITIES AND
EXCHANGE COMMISSION,

Plaintiff,

v.

STEVEN E. NOTHERN,

Defendant.

Civil Action No. 05-10983 (NMG)

**DEFENDANT’S MEMORANDUM IN PARTIAL SUPPORT AND PARTIAL
OPPOSITION TO PLAINTIFF’S MOTION TO CONTINUE TRIAL DATE**

Defendant Steven Nothern respectfully submits this memorandum in response to the SEC’s motion to continue the current November 3, 2008 trial date (Dkt. #112). The SEC has asked the Court to reschedule the trial date “until February 2, 2009, or another date thereafter that is convenient to the Court.” Because an extension would permit the Court to adjudicate the critical pending motions in advance of trial, Nothern does not oppose rescheduling the trial date provided that the trial may be concluded before March 2009.

1. This case relates to events alleged to have occurred on October 31, 2001. The SEC first took Mr. Nothern’s deposition in its investigation in December 2001. Purportedly based on that deposition, the SEC filed suit against Nothern in the Southern District of New York in September 2003 asserting the same claim presented here, but voluntarily dismissed the New York suit in November 2003 after Nothern objected to jurisdiction. The SEC did not file the present action against Nothern in this District until May 11, 2005. Discovery has subsequently been greatly delayed due to the refusal of the Treasury Department to provide documents and witnesses needed for Nothern’s defense, and the SEC’s failure to use its authority

to obtain the same.

2. There are two motions awaiting decision by the Court in the present case. First, on March 21, 2008, Nothern filed a motion to take supplemental depositions for the limited purpose of establishing the admissibility of certain evidence newly disclosed by Treasury and its employees in depositions in February 2008 that had been ordered by the Court. Dkt. #94. In opposition, the SEC states that it opposes Nothern's "efforts to further protract this litigation and delay the trial of this matter by conducting any additional fact witness depositions." Dkt. #97 at 8. Nothern has requested an oral argument, which has not yet been scheduled.

3. Second, on June 16, 2008, Nothern moved for a summary judgment of dismissal of the sole count of the Complaint. Dkt. #104. This motion has also been fully briefed, and Nothern has requested oral argument, which has not yet been scheduled. *See* Dkt. #108 (SEC opposition); Dkt. #111 (Nothern's assented-to motion for leave to file reply). No trial will be necessary in the event that the Court grants Nothern's motion. The parties would therefore benefit from a decision on the motion in advance of the time needed to prepare for trial.

4. The SEC now requests a continuance on the ground that one of its counsel – Sarah Levine, who filed an appearance in this case in May 2007 (two years after filing of the complaint) – will give birth on or around September 1, 2008. It has not indicated that either of its other counsel (lead trial counsel Erica Williams or investigative counsel John Rossetti) will be unavailable in November 2008 or any other time in the succeeding months. Ms. Williams has participated in the case since 2005, and Mr. Rossetti has participated both in the SEC's investigation beginning in 2001 and throughout the present case.

5. Mr. Nothern does not oppose the SEC's requested continuance, provided that the rescheduled trial will be completed by March 1, 2009. Such a continuance will allow the Court more time to consider Nothern's motion for summary judgment and, if the Court grants

Nothern's motion to take supplemental depositions, will allow the parties to complete such discovery prior to trial. At the same time, because Mr. Nothern is eager to bring this prolonged litigation to an end, he opposes continuing the trial past March 1, 2009, and does not believe that there are sufficient grounds to do so.

Respectfully submitted,

STEVEN E. NOTHERN

By his attorneys,

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